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# Whose 'Freedom of Navigation'? Australia, China, the United States and the making of order in the 'Indo-Pacific'

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## ABSTRACT

The so-called freedom of navigation through the Malacca straits and the South China Sea, some of the world's busiest trade routes, has long been of concern to scholars and practitioners of international politics in the region. Increasing tensions around territorial disputes recently propelled the issue to the forefront of global foreign and security policy making. Yet, despite the frequent invocation of threats to the 'freedom of navigation' for the justification of military measures to protect the 'liberal rules-based order', the substance of this rule or norm remains ambiguous and the nature of the threatened order unclear. Located at the confluence of the Indian and Pacific Oceans, Australian discourses represent a suitable case for clarifying both. Starting from the original provisions on navigational regimes in international law, this study analyses the meanings that officials, think tank analysts and academics have been attributing to the freedom of navigation and contextualize them in the evolving debate about order. Focusing on political rather than legal discourses, it finds that concerns with the freedom of navigation are largely unrelated to the safety of maritime transport. Instead, they serve as proxy for an increasingly static imagination of international order – written backward in time – to be secured.

**KEYWORDS** Freedom of navigation; Australia; China; US; order

## Introduction

Maritime security concerns related to shipping routes through the Malacca straits 'chokepoint' and the South China Sea have become the major drivers of post-Cold War international politics. Despite that the contestations in the two geographically distinct areas raise quite different legal and political questions, the issues of territorial disputes and the safety of maritime

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transport are intertwined, often conflated and therefore hardly separable in terms of their effects on international relations. Taken together, they are commonly seen as proof for the fact that rising China is limiting the free flow of goods at sea and, by consequence, challenging the 'rules-based international order' (DoD, 2016; White House, 2015). Yet, the concern with the security of the so-called Sea Lanes of Communication (SLOC) is not new. In the course of seeking to reorient their foreign and security politics after the Cold War, Japanese opinion-leaders had come to see the security of sea lanes through Southeast Asia as a 'matter of life and death' for their economy already in the mid-1990s (Cabinet Secretariat, 1994). The Chinese leadership, by 2003, found itself facing this 'Malacca Dilemma' too (Shi, 2004). At the same time, extra-regional actors such as Australia and the US who would be among the least affected in the extreme scenario of sea lane closures (Laurenceson, 2017; Noer & Gregory, 1996), came to attach disproportionate importance to the freedom of navigation (FoN) in the 'Indo-Pacific'. China's large-scale land reclamations from 2014 onwards and an arbitration tribunal's award for the Philippine and against the Chinese position in the South China Sea from 2016 finally brought the issue to the G-7 leaders' and EU decision-makers' attention (G-7, 2015; G-7, 2016; Tusk, 2016), while reinforcing threat perceptions across the Asia-Pacific region (Turnbull, 2017).

This study seeks to disentangle the drivers of increasing concerns with the so-called freedom of navigation that lie at the core of regional and increasingly also global security politics. By clarifying the meaning of FoN as purported pillar of the global 'rule-based order', this research sheds light on the prevailing conception of international order that is, ostensibly, in increasing need for protection and defence. By addressing the questions: whose freedom of navigation, from what danger, and for which purpose?<sup>1</sup> the present discussion aims to go beyond the assessment of particular claims and actions, and complement existing studies that focus on the Chinese and US roles in challenging and defending international norms and orders.

Australia, a major regional actor with close economic relations to East Asia, enduring cultural links to Europe, and strong military ties with the US, provides a suitable case. This is not only because of its location at the confluence of the Indian and the Pacific Oceans, but also because Australia has no territorial claims in the South China Sea and relies on maritime shipping routes through these seas overwhelmingly for its trade with China.

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<sup>1</sup>These questions align with analytical perspectives that force us to take a closer look at what securitizing arguments are all about (Buzan, Waever & De Wilde, 1998), and Robert W. Cox (1981, p. 126) broader observation about the generation of knowledge (of world order) when he points out that even theoretical arguments are always for someone and for some purpose, and wedded to their time.

Focusing on political rather than on legal discourses, the study finds that the Australian concerns with the freedom of navigation such as they are frequently voiced by government representatives and students of international security essentially revolve about the freedom of navigation for warships rather than for commercial shipping. While piracy and terrorism continue to be seen as major threats to the latter, the challenge of rising China has come to dominate the discourse as the major threat to the former. Yet, as the considerably more nuanced assessments on the part of scholars and maritime policy experts show, the perceived danger is not direct Chinese actions against Australia or Australia-bound shipping. At work are diffuse anxieties that the 'rise of China', or the rise of 'Asia', overturns a particular imagined notion of a US-led order that has, ostensibly, not only guaranteed Australian, but also general regional and global prosperity, security and stability for no less than 70 years. Whether intended or not, this conception of order not only enables continuity in Canberra's foreign and security politics, it also reinforces the Australian state.

To substantiate this argument, the next section outlines the contours of the academic debate about Australian views of order. The subsequent section shows how the developments of the international law of the sea have affected perceptions of the freedom of navigation through Southeast Asian seas. The line of argument then proceeds with discussions of Australian views of the ostensibly legal conception of the freedom of navigation, before situating the FoN within changing geopolitical ideas about regional and global orders, including the rise of the 'Indo-Pacific'. It is then suggested that the Australian equation of the so-called liberal rules based order with an idealized view of the US-centred order, static and written back in time, must invariably produce perceptions of challenges and threats and that it has as much to do with the Australian policy-makers' difficulties with coming to terms with approaching 'Asia', than with external actors' behaviour. In conclusion, the finding that the debate about the Chinese challenge to the FoN and therefore also to the rules-based order is much more about geopolitics than international law, and also raises the question what norms and rules of international order are indeed being challenged, defended and remade.

### **Australian conceptions of international order**

Academics adhere to considerably different conceptions of (international) order. Political leaders, despite frequent usage, deploy it without much substantial clarification, instead imbuing it, explicitly or implicitly, with changing meanings (Bisley, 2016). Thus, it is crucial to remember that 'the language of 'international order' or 'global governance' is never politically neutral' (Hurrell 2007, p. 20). In fact, the 'capacity to produce and project

proposals, conceptions, and theories of order is a central part of the practice of power' (Hurrell, 2007, p. 20). The clearest and most authoritative representations of Australian conceptions of order can be found in the 2016 Defence and the 2017 Foreign Policy White Papers. The reports' thrust is that the so-called liberal rules-based order, a universally beneficial system created and led by the US, has come under threat by the shift of power towards Asia and by the non-democratic assertively rising China in particular (DoD, 2016, p. 14; GoA, 2017). Zala (2016) critically reflects on the former document by means of an imaginary email conversation between the late doyens of post-war Australian international relations scholarship, Hedley Bull and Coral Bell, with E.H. Carr. Yet, despite Zala's (2016, p. 442) aptly points out the report's 'magical' term, the 'rules-based order's' intriguing vagueness, moral loading and fundamental error to conceive international law as existing beyond power relations, his protagonists remain caught in the past. Their debate, similar to the discussions among many of their contemporaries, is focussed on great powers and the desirability of a twenty-first century version of the nineteenth century 'concert' among them (Carr, 2018; White, 2011).<sup>2</sup> They pay scant attention to the political feasibility, fragility and ethical desirability of such a concert. Apart from the fact that great power entitlement to respective spheres of influence carries a neo-colonial ring and would likely accentuate rather than ameliorate the jockeying for regional leadership in the making of rules and norms, the debate also fails to account for the fact that the classical European precursor had been an alliance among declining aristocratic elites that sought to keep peace amongst themselves by transposing interstate competition to their overseas possessions, while guarding against increasing revolutionary pressures at home, both with disastrous consequences (Halperin, 2004). As we shall see, this great power-centric conception of order informs the mainstream Australian debate about the question how much space, if at all, the US should give to the rising powers, to China in particular. However, assuming that Australia is external to and merely reacting to the Sino-US rivalry marginalizes Canberra's own role in these new power politics, including the question how Australia's complicated relationship with 'Asia' matters. To address these shortcomings, methodologically more critical and empirically less Euro-centric perspectives are insightful.

In their discussion of changes in Canberra's foreign and security policies of the 1980s and 1990s, Higgott and Nossal (1997) noted that Australian policy-makers had been thinking and acting as if they were caught in-between two worlds: an 'old' Anglo-American world of Australia's nineteenth-century origins and twentieth-century development, and a 'new'

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<sup>2</sup>See also the 2013 special issue 'The China Choice in Depth,' *Security Challenges*, 9(1), 1-49. Retrieved from <https://www.regionalsecurity.org.au/ReRothwellsources/Files/SC9-1.pdf>

world of the Asia Pacific. While Australia's economic integration into East Asia superseded long-standing links with the imperial England-centred economy, and the abandonment of the White Australia immigration policy in the early 1970s signalled cultural adaptation to its neighbourhood, the 'centrality of Anglo-Saxonism' (Phillips, 2015, p. 23) not only prevented Australia from arriving in the new world, it also engendered persistent feelings of vulnerability towards the 'Asia'. The continuing identification with the British monarchy – Queen Elizabeth II remains the formal Head of State – and the replacement of security ties with the British Empire by those with the US – the Five Power Defence Agreements (FPDA) remain operational and the Australia-New Zealand-US (ANZUS) alliance is more relevant than ever – are but the clearest indicators for Australia's in-between-ness or liminality, and continuing status as 'odd-man out' of the East Asian region (Higgott & Nossal, 2008). The success of Australian initiatives in the 1990s in creating an East Asian regional space, including through the establishment of multilateral institutions for trade and security governance, was fleeting. In fact, even the more progressive Australian Labor Party's efforts to lessen the contradictions inherent to being a 'branch office of empire' or 'Western outpost'<sup>3</sup> remain ambiguous, contested (Jones & Benvenuti, 2006) and prone to arouse political and at times ethnocentric backlashes.<sup>4</sup>

After assessing Australian engagement in the Global War on Terrorism, a development that has widely been seen as a manifestation of the changing global order, Burke similarly concludes that 'Australia's approach to security rests upon an unresolved paradox: it has often been described as 'one of the most secure countries in the world' because of its isolated strategic location, natural sea barrier and distance from major conflict, yet it has long harboured deep sense of physical and existential insecurity' (Burke 2007, p. 126). Perera (2009) delves deeper into the Australian insular imagination and its political consequences. She finds that the hegemonic narrative of Australia's British origins reinforced through the modern cartographic representation of an island-continent and led Australians to think of themselves as being external to the region: Seeing the world as a whole, separates the self from it (Perera, 2009, p. 39). Consequently, Australian policy-makers tend to look at the world out there, overseas, in the binaries of either opportunities or threats. 'Fear' and 'greed' simultaneously inform Canberra's China and 'Asia' policies (Garnaut, 2015). The insecurity that this ideational distance engenders gives rise to the never-ending search for certainty that can be found, temporarily, in reified threats or in reified opportunities (Pan, 2012, p. 15). Both kinds of expectations are unrealistic and unstable. Hence,

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<sup>3</sup>Prime Minister Keating cited in Higgott & Nossal (1997), p. 176, and Australian ambassador quoted in Burke (2007), p. 126, respectively.

<sup>4</sup>For reactions towards rising Japan in the 1980s and 90s see Morris (2010).

the persisting insecurities raise the risk that prophecies of confrontation and conflict become self-fulfilling. Specifically, this cognitive distance or gap manifests itself in the perception that a secure Australia faces an arc of instability or insecurity to its north (Perera, 2009). Yet, what is at stake is not Australia's territorial integrity or military security, but it is very insularity (Perera, 2009, p. 105), an insular identity that has been (Phillips, 2015) and, still is, mobilized for the purpose of the building and reinforcing of the state. To see how this identity construction relates to the 'rules-based order', it is first necessary to be clear about the rules in question.

### **The law of the sea's contested 'rules and norms'**

The entry into force of the United Nations Convention on the Law of the Sea (UNCLOS) in 1994 raised the stakes in territorial disputes while complicating the delimitation of maritime zones and the pertaining rights through the introduction of Exclusive Economic Zones (EEZ). Thereby, UNCLOS indirectly heightened anxieties about the 'choking' hazard of the Malacca Straits due to congestion, pirate attacks and potential interference of hostile naval forces intervening in territorial disputes. Yet, contemporary political debates about the rules and norms of the law of the sea remain silent about the crucial fact that UNCLOS, signed in 1982, is a package deal, which had been reached between two main groups of states that can roughly be defined as the developed and the developing countries (Booth, 1985). The former had long tried to preserve a maximum of their freedom to sail and explore the seas; the latter sought control over their offshore resources while safeguarding their often newly gained independence (Anand, 1983).

The prospect for ever-narrowing semi-enclosed<sup>5</sup> East Asian seas put this fundamental contention within the UNCLOS bargain into stark relief. EEZ give coastal states the sole rights to exploring and exploiting all living and non-living resources up to 200 nautical miles (NM) from their shores (UNCLOS 1982, art. 57). Where governments can prove the presence of continental shelves, these zones can be extended up to 350 NM from their coastlines to a maximum depth of 2500 m (UNCLOS 1982, art. 76). Hence, the sovereign control over islands, defined as naturally formed land that remains above water and sustains economic life (UNCLOS 1982, art. 121), and therefore generate rights to EEZ, brought features such as the Paracel and Spratly groups at the centre of the South China Sea into spotlight. Yet, expanding claims to territorial seas and exclusive economic zones, and

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<sup>5</sup>Art. 122 UNCLOS defines a semi-enclosed sea as 'a gulf, basin or sea surrounded by two or more States and connected to another sea or the ocean by a narrow outlet or consisting entirely or primarily of the territorial seas and exclusive economic zones of two or more coastal States', and therefore in art. 123 stipulates special responsibilities for coastal states to cooperate in managing and ecologically preserving them.

concomitant rights to enforce provisions for the marine environmental protection and the regulation of maritime transport, sometimes referred to as 'creeping jurisdiction' (Kwiatkowska, 1991a), have been preoccupying UNCLOS negotiators for decades. Therefore, the developed states made sure for UNCLOS to codify the freedom of navigation according to the customary legal norm based on *Mare Liberum*, Hugo de Groot's (Grotius) treatise in defence of the Dutch Empire's access to Southeast Asia against Imperial Portuguese and Spanish attempts to monopolize trade routes. UNCLOS articles 17-19 grant the right to *innocent passage* through territorial seas to all foreign ships, provided that it is 'not prejudicial to peace, good order or security of the coastal state'. However, mostly Euro-Atlantic developed states, many of which boast strong naval forces, deemed this provision too restrictive. Their pushback eventually led to a compromise through the introduction of the *transit passage* regime (UNCLOS, 1982, art. 37-40). For traffic along sea routes, through straits commonly used for international navigation between one part of the high seas or an exclusive economic zone and another, the relaxed regime, which does not mandate submarines to surface and show their flags, would apply (UNCLOS 1982, art. 20). This provision is complemented with the regime of *archipelagic sea lane passage* that requires archipelagic states<sup>6</sup> to designate sea lanes and air routes through their waters. If they refrain from doing so, archipelagic sea lane passage nevertheless applies to those routes that are 'normally used for international navigation' (UNCLOS 1982, art. 53).

In the 1980s and 1990s, the pertaining disagreements between the often newly independent coastal states on the one hand and extra-regional (great) powers on the other hand centred on the Philippines and Indonesia. Both had been refusing to acknowledge several commonly used international transport routes and guarantee archipelagic sea lane passage. By the 2000s, however, the contestation between those naval powers favouring the freedom of navigation for their ships and coastal states interested in keeping foreign vessels off their (claimed) seas resurfaced in the form of opposing interpretations of the right to free navigation in exclusive economic zones. According to UNCLOS, coastal states' right to exploit living and non-living resources within their EEZ precludes foreign vessels from conducting oceanographic research for that purpose. For Chinese leaders who established their modern independent state in 1949 and have, on the background of not too distant historical experiences, long felt vulnerable to naval powers, this meant that any oceanographic research would require

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<sup>6</sup>According to art. 46 UNLCOS, archipelagic states are comprised of 'islands, including parts of islands, interconnecting waters and other natural features which are so closely interrelated that such islands, waters and other natural features form an *intrinsic geographical, economic and political entity*, or which historically have been regarded as such' (emphasis added).



prior notice and approval (PRC, 1998). In contrast, the US as the main operator of government vessels in East Asian seas strictly distinguishes between exploration activities for economic from those for military purposes. While critics point to the obligation, according to UNCLOS art. 58, of states to operate in EEZ with 'due regard to the rights and duties of the coastal State,' Washington argues that the intelligence gathering is permitted as long as the results are not used for resource exploration (Neher, Pedrozo, & Roach, 2009). Despite Australian experts' alarmist reactions when the Chinese navy did precisely that and observed military exercises from within the Australian EEZ (thereby revealing its own double standards), Canberra adheres to the same liberal interpretation (Greene, 2017).

The Sino-US confrontation over interpretations of international law extends to the skies. It caused one of the biggest crises in post-Tiananmen Sino-US relations when it led to the mid-air collision of a Chinese fighter jet with a US reconnaissance plane in April 2001 (Kan et al., 2001). At sea, the so-called Impeccable incident of 2009 epitomizes this action–reaction cycle. Then, 'five Chinese vessels shadowed and aggressively maneuvered in dangerously close proximity to USNS Impeccable in an apparent coordinated effort to harass the US ocean surveillance ship while it was conducting routine operations in international waters [China's Exclusive Economic Zone]' (Kan et al., 2001, p. 1). Such incidents are recurrent (Wirth, 2017), and tensions rose to yet another level after media reports in September 2015 showed how China has been reclaiming and guarding large areas around a number of reefs, rocks and islets in the disputed Spratly group (Sciutto, 2015). In response, the Obama and Trump administrations enhanced the so-called Freedom of Navigation Operations (FONOPS) in the South China Sea. In line with long-standing practice (DoD, 2017) and under heightened public scrutiny, the US Navy sailed warships close to or within the hypothetical territorial seas of China-claimed features (O'Rourke, 2017; Panda, 2017). For Australia, the US's staunchest ally in the region, this development accentuated a number of difficult legal and political questions.

## **Extending maritime territories and zones**

Surrounded by the ocean and thus heavily dependent on maritime transport, Australia had been an early and enthusiastic participant in the UNCLOS negotiations. The birth of new states in the course of the wave of decolonization, and Great Britain's retreat from 'East of Suez', made the constitution of a new order all the more important. Throughout the 1980s and in the early 1990s, Australia, by aligning itself with both, those who sought to preserve maximum freedom to sail the seas and those who sought to gain control over marine resources and independence, benefitted

enormously from the ocean enclosure movement embodied in UNCLOS. Given its strong historical and political ties, that is 'shared common values' with the United Kingdom and the US, Australia joined the Western Europe and Others negotiation group, which favoured unimpeded navigation. Yet, the Australian position was not singularly focused on the freedom of navigation. Canberra was also keen to extend the reach of its own sovereign control over marine resources.<sup>7</sup> According to Kaye (2015, p. 256) 'as a State with an extensive and remote coastline, and a wide continental shelf, it was clearly in Australia's interests to pursue the greatest extension of maritime jurisdiction possible'. Hence, Australian negotiators also played a leading role in the so-called 13 Broad-shelf States or Margineers Group and, in addition, participated in the Coastal States Group, which explicitly aimed at expanding state control over coastal seas while pushing back against the lobbying of the Landlocked and Geographically Disadvantaged States. Not least due to claiming 41% of the Antarctic continent, Australia, by 2008, came to claim 'rights over more waters than any other nation' (Woolner, 2008, p. 2). Still, with the freedom of maritime transport routes their major concern, Australian representatives supported a pragmatic definition of innocent passage and succeeded in defending their view on the passage of warships through territorial seas (Kaye, 2015). At the same time, the minor importance of fishing for the Australian economy and the vast expanses of Australian seas meant that questions related to exclusive economic zones, despite being hotly debated elsewhere, remained relatively uncontentious in Canberra.

This situation changed when national governments started adjusting their legal frameworks to the UNCLOS' new spatial ordering of the seas and thereby exposed the contradiction inherent to the UNCLOS package deal, including Canberra's taking advantage of it. Australian representatives protested vigorously when Malaysia, the Philippines and Indonesia reiterated their intentions to retain jurisdiction over their coastal and archipelagic waters, respectively (Gol, 1983; GoM, 1984, Johnson, 2000; Kwiatkowska, 1991b). In 1992, Beijing adjusted national legislation too and passed the Law on the Territorial Sea and Contiguous Zone. The Chinese move caused widespread concern because it not only reiterated and elaborated on previous claims in the South China Sea, but also included the disputed Diaoyu/Senkaku East China Sea islets and codified the requirement for foreign 'military ships' to seek prior approval before entering China's EEZ (PRC, 1992). At the same time, the Philippine and Indonesian governments continued to drag their feet; Jakarta's designation of a mere three archipelagic sea lanes, roughly in East–West direction and therefore of limited use for Australia-bound shipping, has consistently been criticized in Canberra

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<sup>7</sup>Due to their control over vast island territories in the Indian and Pacific Oceans, and the Caribbean, the former imperial powers gained most out of UNCLOS, by far (Nolan, 2013)

(Forward, 2009). By the late 1990s, however, the Australian focus shifted northward.

Wrangling over hydrocarbon exploration among the littoral governments meant that territorial disputes in the South China Sea continued to fester. After a Philippine plan to conduct a survey off Palawan leaked, the Chinese government apparently decided to occupy a rock formation also known as Mischief Reef (Hayton, 2014, ch. 3). The barracks on stilts were discovered in January 1995 and became an epitome for China's expansion. This was mainly a result of the Philippine response: confronted with this *fait accompli*, the Ramos government sought to regionalize and internationalize the dispute. In vain, it tried to invoke the US-Philippine Mutual Defense Treaty (Dzurek, 1996). Yet, this lobbying rekindled fears of rising impediments to the freedom of navigation. Because, or, despite that observers frequently noted that the reef lay in the midst of a heavily-frequented shipping route, the Philippines succeeded in inducing Japan and the US to reiterate their national interests in the freedom of navigation or security of the so-called sea lanes of communication (SLOC) (Dzurek, 1996, p. 35). As the disputes among the South China Sea claimants escalated, the Philippines also managed to get Australia on board: in 1996 already, the Australian Defence Minister had perceived the Spratly dispute as posing 'a major threat to regional security' (Dzurek, 1996, p. 42).

Yet, the Australian government was not immune against the temptation to control maritime space for the sake of national security. In 2004, fuelled by fears of terrorist attacks in the wake of 9-11, the Howard government set out to declare an Australian Maritime Identification Zone, soon to be renamed 'System' (AMIS), under which Australian authorities would require all non-recreational vessels navigating within 1000 NM of the coast to report their identity and provide details about their journey and cargo before entering Australian ports (Bateman, 2007; Klein, 2006). Then, in 2005, the Joint Border Protection Command comprising the Australian Defence Force and Customs Service was set up, giving the former unprecedented law enforcement powers (Moore, 2006). After strong protests, especially from Indonesia and New Zealand – the implementation of the original plan would have meant that Canberra effectively policed these countries' seas – the AMIS seems to rely mostly on the collection and management of electronic data, while its legal status as maritime zone remains unclear (Goldrick, 2008, p. 242). Meanwhile, the South China Sea disputes continued unabatedly and shifted the focus on other states' efforts to control the seas.

### **Debating threats to the 'freedom of navigation'**

In the course of a few years, the long-standing contention between the developed and developing states over the extent of the freedom of the

seas versus the enclosure of the ocean, inherent to UNCLOS, became reframed. Specific concerns related to the freedom of navigation were equated with UNCLOS as a whole, which, in turn, became a proxy for 'international order'. Paradoxically, this strengthening emphasis on the 'rules-based order' went hand in hand with the emptying from meaning of the already ambiguous term. Concrete problems with international law and UNCLOS as a whole got marginalized in the heated debates about frequently deployed and therefore increasingly abstract notions of 'freedom' and 'rules-based order'.

Intensifying contestations over territorial control in the South China Sea stirred Australian anxieties and led to the reaffirmation of Canberra's 'strategic interests' in the region. When, in April 2012, a Philippine naval vessel's inspection of Chinese fishing boats near Scarborough Shoal led to a prolonged stand-off, the then Australian Foreign Minister Carr stated that Australia does not take sides. Yet, with clear reference to China's reluctance to abandon the so-called nine-dash line, an ambiguous and also within China debated (Wang, 2015) claim to the entire South China Sea, Carr emphasized that 'we do, given our interest in the South China Sea, given the fact that a large proportion of our trade travels through it, [...] call on governments to clarify and pursue those claims and accompanying maritime rights in accordance with international law including the UN Law of the Sea Convention' (BBC, 2012). Subsequently, the Liberal opposition party and a number of strategists called upon the government to become more active in resolving the dispute, because 'the South China Sea is Australia's single point of greatest strategic vulnerability' (Callick, 2012).

Meanwhile, Beijing continued to raise tensions when it established Sansha City as a political entity with formal jurisdiction over disputed waters (Callick, 2012). The reason why Australia should be worried and become involved more strongly, according to one major newspaper, is the fact that Sansha City sits right at the centre of a 'freight freeway', through which 'two-thirds of Australia's exports and almost half of its imports, about \$273 billion worth of goods, are carried through the South China Sea' (Callick, 2012). Just as Carr's earlier assertion and countless official reiterations of it, the article did not mention that this trade is mostly between Australia and China and that Beijing itself increasingly anxious about its so-called 'economic lifelines' would have scant interest in disrupting them (Laurenceson, 2017; Noer & Gregory, 1996).

An apparent next step in China's strategy to control what its leaders regard as theirs, and not Japan's, Beijing in November 2013, declared an Air Defence Identification Zone (ADIZ) over the East China Sea. Foreign Minister Bishop (2013) made clear the Australian 'opposition to any coercive or unilateral actions to change the status quo', while calling in the Chinese

ambassador for further explanation. This led to a spat with China and brought the strengthening defence ties of the Abbott with the Abe government of Japan into focus (McGrath, 2013). At the same time, mostly due to fears that the ADIZ' curtailing of the freedom of overflight might establish a precedent, calls for Australian FONOPS through the newly established ADIZ and public demonstrations of 'support for allies who do so to avoid the emergence of a new status quo where China rules its surrounding seas' became louder (Slevison, 2015). Assertions that 'inaction has the potential to encourage China to declare a South China Sea ADIZ in the foreseeable future' (Slevison, 2015) added urgency.

The revelation in September 2015 that China had been reclaiming land and building large facilities on several disputed rocks and reefs in the Spratlys caused widespread consternation and unsurprisingly provoked strong criticism. While asserting Australia's 'legitimate interest in the maintenance of peace and stability in this part of the world, including the preservation of respect for international law, unimpeded trade and freedom of navigation', the Australian Minister of Defence expressed 'opposition to any coercive or unilateral actions to change the status quo' in the South or East China sea, including 'any large-scale land reclamation activity' and the prospect of the artificial structures' militarisation (Andrews, 2015). This rekindled talk about the possibility that the Abbott government would send a surveillance plane over these facilities, thereby conducting Australia's own FONOPS. Rory Medcalf (2015), a prominent proponent of a moderately assertive stance, also known for his advocacy of the 'Indo-Pacific' geopolitical concept, argued that 'Australia cannot pretend that what happens in the South China Sea is none of its business' because:

As a middle power, Australian security ultimately depends on a rules-based regional order ... Damage to that order through coercion or unilateral assertiveness as we have seen in these contested waters in recent years, equates with damage to Australian interests. Australia's lifelines, its trade routes to and from some of its top trading partners, including China but also Japan and South Korea, run through or close to those waters – as do the sea lanes on which the commerce of much of the world depends.

Yet, Hugh White, a former defence official well known for his advocacy of a new, the so-called concert of powers giving China more and better seats at the tables of world politics, pointed out that it was not clear whether China's land reclamations were a threat to the FoN or to international law and that the confrontations resulted from the US and China competing over primacy in the Asia-Pacific. For him, the debate was about the US and Australia trying to figure out whether or not and how to use these islands as a means to draw a 'red line' for China's growing regional influence (White, 2015). Similarly, Sam Bateman (2015a), a former naval officer

and one of the foremost experts on Asia-Pacific maritime affairs, opined that:

Australia's direct national interests aren't involved with overflight in the South China Sea in the same way as they are with navigation and overflight through the [Indonesian and Philippine] archipelagos to our near North. Furthermore, China hasn't made clear which restrictions on navigation and overflight it's imposing around features it occupies in the South China Sea. ... As well as provoking China, that gesture would be seen in the region as Australia simply acting once again as a 'deputy sheriff' to the US in the region.

In line with legal experts at the US Naval War College (Dutton & Kardon, 2017), Bateman also pointed out that the issue is politically and legally rather complex because: US FONOPS in that area seemed to focus only on Chinese actions; the legal status of the challenged features – some installations would only have 500m safety zones, others, classified as mere rocks only constitute 12NM territorial seas, etc. – is unclear; most features are claimed by several coastal states, naval presence in territorial seas may violate the laws on innocent passage, and because FONOPS risk provoking dangerous maneuvers that may endanger the safety of seafarers if not performed at the highest levels of seamanship (Bateman, 2015b). Indeed, a year later, an arbitration panel in The Hague denied several of the features claimed by China and patrolled by the US the legal status of a 'rock', and thereby ruled that they would not even be entitled to a 12NM territorial sea (PCA, 2016, p. 472). The US had been engaging in some sort of legal shadow-boxing.

The judges' differentiated reasoning on a limited set of legal questions notwithstanding the award had a profound impact on the political debate. As Nick Bisley (2016) had already pointed out before it was handed down, the general mood was that 'something must be done' against the expanding Chinese presence in the South China Sea. Despite that most experts deemed their legal utility at best unclear (Raymond, 2016), and the prospect of rising tensions assured, this something was Australia's own or participation in Washington's FONOPS programme. In particular, exponents of the Labor opposition deemed the government's policy of continuing routine surveillance operations (Greene, 2018) and enhanced bilateral and multilateral naval diplomacy insufficient (Massola, 2016). Strikingly, these arguments for a more 'robust' military posture, while triggered by Chinese violations (specific interpretations) of UNCLOS, were not made with reference to international law, but to geopolitics.

Medcalf's (2016, p. 10) just as the Defence Minister's concerns with the FoN seemed to rest foremost with alliance politics that is a particular notion of international order, when pointing out that it was the joint Australian-US-Japanese condemnation of Chinese actions that mattered most, noted

that ‘the tensions in the South China Sea are testing American resolve, credibility and diplomatic dexterity’ and that ‘the United States is the ally on which Australian security deeply depends, and therefore, these are tests for Australia too’ (Medcalf, 2015). Rothwell (2017) was even clearer in this when he stated that the US FONOPS’ first ‘primary purpose’ is ‘to protect the mobility of US forces and to ensure that they can move freely between oceans, which has been critical for the maintenance of US naval hegemony’ and that ‘Australia wouldn’t wish to be constrained in its naval movements in coming to the aid of regional friends and allies because of China’s position on warship navigation through the South China Sea’. In fact, the ways in which they are conducted, FONOPS could well produce the opposite of the intended effects, also in terms of coastal states’ compliance with UNCLOS and the recognition of territorial claims (Bateman, 2017; White, 2017).

This prevalence of geopolitics explains the vast exaggeration of the importance of ‘Indo-Pacific’ sea lanes for the Australian and the US economy, for instance by the defence minister (Andrews, 2015). Since US-bound commerce is, at best, marginally reliant on Southeast Asian waterways and since Australia relies on them only for a fraction of its trade, overwhelmingly for iron ore and coal exports from Western Australia – to the very China that is supposed to threaten them (Laurenceson, 2017) – the assertion of the FoN in the ‘Indo-Pacific’ cannot but refer to the FoN for warships. After all, this geographical term had long been standing for the theatre of operation of the US Pacific Command, which was renamed US Indo-Pacific Command in June 2018. Moreover, the ‘Indo-Pacific’ brings together India, Australia, Japan and the US, whose ‘shared democratic values’, according to the then Commander US Pacific Command, place them best to safeguard ‘freedom, justice and the rules-based system’ at the present ‘inflection point in history’ (Harris, 2017). In short, China had become an imminent threat to the established ‘liberal rules-based order’ (Wroe, 2016). To clarify the nature of that order, to understand why Australian authorities see it worth defending with military force, it is necessary to put the notion of order into the broader historical and security political context.

## **Debating changes and challenges to international order**

East Asian seas have long been of interest to Australian policy-makers. Yet, through the invocation of threats to the FoN as recent reframing of sea lane security, the post-Cold War discourse reveals a deepening linkage between maritime disputes and geopolitically defined notions of order. Consequently, international order has been portrayed as in need and

amenable for defence by military means, the increasing use of attributes such as 'rules-based', 'norms', 'liberal' and 'freedom' notwithstanding. This development went hand in hand with the geographical expansion of strategic interests. Since the Imperial Japanese forces' heavy bombing of Darwin and midget submarine intrusions into Sydney harbour, the main concern had been the prevention – and pre-emption – of hostile forces' overcoming of the so-called air-sea gap and establishing bridgeheads on Australian soil. The fears about a resurgent Japan and the spread of communism induced Australia and New Zealand to seek formal security guarantees from the United States, which led to the conclusion of the 1951 ANZUS alliance treaty (DoS, undated). Thus, defence planners have consistently asserted that 'the ability to protect our maritime and air approaches is fundamental to our sovereignty and security' (DoD, 1987, p. 1). Geographically, the location and delineation of these 'approaches' remain ambiguous. Yet, the use of the term suggests an operational definition that excludes the Malacca straits and the South China Sea.<sup>8</sup>

By way of its 'old world' military ties, however, Australian interests reached significantly beyond the air-sea gap that separates Australia from 'Asia' and the rest of the world. As the 1987 Defence White Paper explains, 'the United States gains information important to its global maritime intelligence system from Australian surveillance and intelligence gathering activities in an area extending from the eastern Indian Ocean to the South-West Pacific' (DoD, 1987, p. 4). This mainly refers to Operation Gateway that the Royal Australian Air Force (RAAF) has been conducting, foremost against the Soviet presence in Vietnam, out of Butterworth Air Base in Malaysia. Canberra maintains access to this location through the Five Powers Defence Agreements (FDPA), which had been established among the United Kingdom, Australia, New Zealand, Malaysia and Singapore after the withdrawal of the British from 'East of Suez' in the late 1960s, until the present day. Still under the impression of the partial troop withdrawal from East Asia following President Nixon's Guam doctrine, they emphasized that the alliance

provides us with *confidence* that assistance would be forthcoming in the event of substantial military attack on Australia or its direct interests. Moreover, United States action would be most unlikely to await the emergence of a major threat. The dramatic strategic changes that would *precede* such a *threat* would inevitably impinge on important interests the United States has in the region (DoD, 1987, p. 26), emphasis added).

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<sup>8</sup>Among other documents, the indicative coverage of the Royal Australian Air Force's (RAAF) Jindalee Operational Radar Network over-the-horizon radar suggests a focus that includes most of the Indonesian archipelago and Papua (RAAF, Undated).



In short, Australia's security has been perceived as constituted by the US military presence in the region, and US perceptions of impending threats served as a kind of early warning system for strategic and tactical threats to Australia. In this context, the East and South China Seas have been of indirect interest to Australian officials.

The end of the global Cold War affected this perception in that it accorded more weight to multilateral institutions complementing the alliance. The 1994 Defence White Paper, somewhat ambiguously, if not contradictorily, asserts that: 'alliances, regional links and global security arrangements enhance our security environment by making attacks on Australia less likely', and, at the same time, 'contribute to efforts to minimise the role of armed force in international affairs and establish credible, *rules-based regimes* for conflict resolution' (DoD, 1994, pp. 3 and 194, emphasis added). While maintaining the focus on the air and sea approaches and striving to continue the Australian military presence in Malaysia, territorial disputes in the South China Sea were briefly mentioned as an ongoing source of regional tensions. Yet, the White Paper emphasized the for a middle power particularly important role of international organizations for conflict prevention, management and resolution as they foster an 'orderly international system in which agreed norms of conduct constrain the use of force' (DoD, 1994, p. 16).

This liberal institutionalist perspective also informed the Australian approach to China, which re-emerged as a major actor on the stage of international politics: 'As with other regional countries, we seek a better understanding of China's strategic perceptions and intentions, and ... encourage China to participate fully in regional and other multilateral security discussions' (DoD, 1994, p. 91). However, conform with the structural realist emphasis on military power, the US-Australia alliance gained in importance too, because it provided the stable ground from where Australian policy-makers sought to manage the shifting international order: 'Increasingly, as we seek *security in and with Asia*, we will value our alliance with the United States not just for the contribution it makes to Australia's own defence, but also for its broader contribution to regional security' (DoD, 1994, p. 95, emphasis added). Accordingly, enduring 'shared values', written back in time, replaced the common Soviet threat as a legitimating argument: 'The relationship, however, is founded on our shared interests in a stable and secure Asia-Pacific region and values and traditions which pre-date the Cold War and will endure long after it' (DoD, 1994, p. 95).

By the year 2000, however, concerns about great power conflict grew and Australian officials started to emphasize the stabilizing role of the US, not only for upholding global security order alongside the UN, but also for securing regional stability, that is, the 'Asia Pacific security system' (DoD,

2000, p. 10). As a consequence of this increasingly discernible bipolar vision, Washington's other Asia-Pacific alliances came into focus, and the strategic gaze extended beyond the traditional horizon of the maritime approaches. According to the White Paper, 'the strength of US security commitments to Japan, and the scale of US military deployments in Northeast Asia, which the US-Japan relationship facilitates, is critical to maintaining strategic stability in the whole region' (DoD, 2000, p. 18). Against the defining experience with Imperial Japanese invasion attempts and the related mythmaking around the Battle of the Coral Sea that underpins the US-Australian defence relationship, Canberra's acknowledgement of Japan's new role signified an important shift. Moreover, in this fluid international order, the Australia-US alliance 'founded on enduring shared values, interests and outlook, as well as common sacrifices that extend back almost a century,' and imbued with 'renewed vigour,' provided a stable reference point (DoD, 2000, p. 34). Conversely, China came to be seen as a potential threat to regional stability and, by consequence, also to Australian security: 'We would be concerned about any major external threat to the territorial integrity of the nations in our nearer region, especially in maritime Southeast Asia, whether that threat came from outside or inside the region' (DoD, 2000, p. 31) and the 'ability to operate freely in our surrounding oceans, and to deny them to others,' came to be seen as critical for the defence of Australia (DoD, 2000, pp. 87-88). Albeit implicitly, the Australian Department of Defence had introduced its own the so-called Anti-Access Area Denial (A2/AD) doctrine, a strategy that is often ascribed to Chinese efforts at keeping rival military forces from operating in the East China Sea (Fravel & Twomey, 2014).

### **The rise of the 'Indo-Pacific'**

By 2009, perceptions of the strategic environment had changed insofar as India emerged as a stabilizing force on the strategic landscape. Amid Washington's continued entanglements in Middle Eastern quagmires, and some doubts about the Australian role in it, the 'end of the so-called unipolar moment; the almost two-decade-long period in which the pre-eminence of our principal ally, the United States, was without question' (DoD, 2009, p. 9), appeared on the horizon. Thus, the explicit and diplomatically provocative question: 'Will the United States continue to play over the very long term the strategic role that it has undertaken since the end of World War II?' (DoD, 2009, pp. 32-33). Consequently, the overall impression was that of an increasingly multipolar global order emerging. This entailed an optimistic, inclusive outlook on China, whose 'political leadership is likely to continue to appreciate the need for it to make a strong contribution to strengthening the regional security environment and the *global rules-based*

order' (DoD, 2009, p. 34, emphasis added). At the same time, however, defence planners attributed the Indian Ocean with greater strategic significance as 'global trading thoroughfare, particularly for energy supplies between Asia and the Middle East,' and expected it to 'join the Pacific Ocean in terms of its centrality to our maritime strategy and defence planning' (DoD, 2009, p. 37). After all, India, due to perceived shared democratic values, has consistently been portrayed as an important partner for Australia, including for 'combating regional and global terrorism and maintaining a rules-based global security order' (DoD, 2009, p. 96).

In the face of these perceived historical changes, the term rules-based order gained currency, while the security-political discourse simultaneously built up and began to project backward in time, a particular notion of order. The 2009 White Paper is the first to include an entire section elaborating why and how a 'stable, rules-based global security order' must be preserved (DoD, 2009, pp. 43–44). Although the United Nations and the UN Charter formally remained central components of this rules-based order, the report asserted that it is the 'global leadership role played by the United States *since the end of World War II*' which has 'provided the strategic underpinning for the post-war global order' (DoD, 2009, p. 44, emphasis added). Still, the rise of 'Asia' necessitated a more comprehensive debate about the future of foreign and security policy.

In 2012, Prime Minister Rudd's Labor government took a proactive step and commissioned a White Paper addressing the long-standing question how Australia can find its place in the impending Asian Century. The report rested on the premise that the economic growth and broadening international interests of 'Asia's large powers, especially China and India, are changing the *established strategic order*' while existing regional strategic tensions such as North Korea's nuclear program and unresolved territorial disputes remain; Australia's strategic landscape was seen as 'becoming more crowded and complex' (GoA, 2012, p. 7). Consequently, Canberra would 'continue to support a greater role for Asian countries in a rules-based regional and global order' (GoA, 2012, p. 3). The envisioned pathways consisted, among others, of the promotion of fair representation for Asian nations in key international organisations and their encouragement to be part of, and help shape, these *rules-based institutions*; support for China's participation in the region's strategic, political and economic development, and working with the United States to ensure that it continues to have a strong and consistent presence in the region, 'with our alliance contributing to regional stability, security and peace' (GoA, 2012, p. 23, emphasis added). Thus, the dynamic and inclusive view of the 'international system established after World War II' (GoA, 2012, p. 72) as it brought about the 'longest and most prosperous period of peaceful expansion ever witnessed' would,

in principle, allow for the accommodation of both Chinese and Allied interests. In practice, however, the Australia in the Asian Century White Paper not only glossed over the serious armed conflicts that were fought in the name of preserving that very order; the hot wars in Korea and Indochina, large-scale violence in Indonesia and Cambodia, and the looming mutually assured nuclear destruction. It also assumed that this post-WWII order has been and remained in itself consistent, unchanging and generally accepted among the established ('Western') powers. It neither accounted for the critical views that existed toward the United Nations system, including during the Global War on Terrorism campaigns and in the US Senate's refusal to ratify UNCLOS, nor for the generally occurring instrumentalization of international laws and institutions on the part of powerful states.

The actual idea of a new order that the White Paper Australia in the Asian Century brought up was neither entirely new, nor embodying 'inclusive, rules-based systems' such as it promoted them in places other than Australia (GoA, 2012, p. 205). To be sure, the idea of the 'Indo-Pacific' can be seen as novel in that it rebalances the Australian strategic outlook from the Pacific toward the Indian Ocean, thus acknowledging the importance of India as a major future player (Medcalf, 2014). Yet, in raising the possibility that the 'importance of the lines of energy supply' makes the two oceanic spaces form a 'strategic arc' (GoA, 2012, p. 74), the 'Indo-Pacific' concept revived a geopolitical idea that had existed since the 1930s (Haushofer, 1938). Its contemporary usage is conspicuous because it explicitly seeks to align a particular set of procedurally democratic states in their quests to promote their respective far-reaching naval interests (Pan, 2014). The subsequent reference to the South China Sea and 'maritime parts of Northeast Asia', combined with a focus on Chinese compliance, situates the Australian interpretation of international law within the 'Quad' of like-minded states that co-constitutes Indo-Pacific geopolitics (GoA, 2012, pp. 236/237).

This ambiguity, if not contradiction, in how Australian policy-makers approached rising 'Asia' came to the fore more clearly in 2013. After the Australia in the Asian Century White Paper made the case for Asia engagement and a recalibration of foreign and defence policies, the publication of the National Security Strategy, one year later, signified a strong pushback. The definition of 'Australia's place in the world' underpinning the strategy left no doubt about where the fault lines of international politics lie: 'Australia is a liberal democracy with deeply held values. ... These values influence our foreign and defence policy. Our values underpin our reputation as a responsible member of the international community, committed to a rules-based global order' (DoPC, 2013, p. 7). More precisely, 'we have a fundamental interest in global rules and institutions that prevent conflict, effectively manage security threats and support the free flow of people,

goods, services, ideas, capital and principles' (DoPC, 2013, p. 20). Marginalizing other dimensions and alternate forms of order, Australia-US military cooperation was portrayed as the *sine qua non*:

The value of the Alliance lies not simply in its defence aspects. It strengthens our prosperity as well as our security. The United States is integral to global economic growth and security, and provides the critical underpinning to the rules-based order that exists today (DoPC, 2013, p. 22).

Revealing the bipartisan nature of these ideas, the 2016 Defence White Paper, written under the auspices of the Liberal Party government,<sup>9</sup> built on this notion of the rules-based order:

The growing prosperity of the Indo-Pacific and the rules-based global order on which Australia relies for open access to our trading partners are based on the maintenance of peace and stability. *Over the last 70 years* that peace and stability has been underpinned by a strong United States presence in our region and globally as well as active engagement by regional states in building a rules-based order (DoD, 2016, p. 14, emphasis added).

Unlike previous defence White Papers, however, the 2016 edition explicitly mentioned territorial disputes between claimants in the East China and South China Seas as sources of instability that necessitated a reassessment of Australia's defence policy. In addition, the White Paper also pointed to China's unruly behaviour, not just in terms of FoN, but also in other global commons like the cyber and outer space domains. Defence planners understood these frictions, which they perceive as mostly occurring between the US and China, as challenges to the rules-based order, an order that is explicitly defined as the 'broad architecture of international governance which has developed since the end of the Second World War' (DoD, 2016, p. 45). In other words, the more change Australian policy-makers perceived, the stronger their inclination to imagine a pre-existing static notion of order in need for stabilization.

### **Imagined stability and attempts to arrest change**

The heightened anxieties that resulted from perceived challenges to the imagined 70-year-old stable order gave rise to intensified search for and stronger emphasis of conservative ideas about Australianness while producing outflow onto foreign and security political strategizing. From the 2017 Foreign Policy White Paper in particular, it becomes apparent that the government's concern with the liberal rules-based order – according to the Prime Minister, Australia is facing the 'most complex and challenging geo-strategic environment since *the early years* of the Cold War' – stems in large

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<sup>9</sup>See also the statements by the representatives of the Coalition Government (Bishop, 2016), the Labor opposition (Pliibersek, 2016) and the Green Party (Ludlam, 2016) opposition. Only the Greens' position diverts markedly.

parts from the perception that 'Australian values', including 'our way of life,' are being threatened by global change such as 'continued dynamism and growth in Asia' (GoA, 2017, pp. iii and v, emphasis added). As he and the foreign minister asserted, the government must remain committed to those values in order not to continue losing 'confidence' in their nation's prosperous future. But while the White Paper warns about the challenges to the 'international rules designed to help maintain peace and minimise the use of coercion', it nevertheless prescribes means of coercion as primary tools for upholding this peaceful order when stating that 'Australia's security is maintained primarily through our own strength, our alliance with the United States and our partnerships with other countries' (GoA, 2017, p. 24). Despite denying to impose values on others, the White Paper explicitly asserts that Australian 'national power' and the alliance with the US, whose interests are understood as inherently congruent with the international order, are instrumental for securing 'liberal institutions, universal values, and human rights' such as they 'serve to advance our national interests', worldwide (GoA, 2017, pp. 2 and 11).

Australian policy-makers reconcile these tensions among conflicting views and rival agents of order, such as they surfaced most visibly when the UN Security Council did not approve the US-led invasion of Iraq in 2003, through a geographical conception of interlocked strategic interests: 'a stable rules-based global security order increases the likelihood of strategic stability in the Asia-Pacific region, which in turn makes more likely the maintenance of a secure immediate neighbourhood and ultimately a secure Australia' (DoD, 2009, p. 45). In an unambiguous reference to the Cold War era when the 'indivisibility of freedom' (Weldes 1999, p. 43) provided an all-encompassing cognitive framework for engaging the world out there, overseas, Canberra maintains an indivisible conception of security and of order. This view of international order is not only unusual because its inscription of continuity, from the 1950s to the present, runs counter to the conventional understanding of the Sino-US rapprochement of the 1970s and the collapse of the Soviet Union in 1990 as epochal geopolitical, and the adoption of capitalism in China as monumental political economic turning points. This view of order linked to Australian security is also problematic because it invariably requires the securing of world order as a whole. In times of rapid change, however, change may be characterized, any static, and indivisible conception of order will inevitably be challenged or threatened. Since these threats are first detected and defined – if not caused – by security agencies, the military dimension of order occupies front and centre of the cognitive horizon. Thus, the foreign and security-political discourse marginalizes alternate conceptions of order and change, including interpretations of China's rise: as the world's factory and the world consumer, its

demand for vast amounts of Australian coal and iron ore may well have been securing the heavily resource-export dependent country's prosperity and social stability – the 'Australian way of life' – not only but especially during the 1997 Asian Financial and the 2008 Global Financial Crises.

In that threats such as those to the FoN pillar of the 'post-WWII strategic order' (Bishop, 2016, p. 454) maintain Australia's relative ideational distance from approaching 'Asia', they perpetuate its insularity. An insularity which, in turn, mandates attachment to the US as the 'leader of the free world' (Farnsworth, 2011; Gillard, 2011) and enables striking continuity in Australian foreign and security politics:

The Government is [i.e. remains] committed to working with the United States and like-minded partners to maintain the [70 years-old] rules-based order by making practical and meaningful military contributions where it is in our interest to do so. Australia has a long history of contributing to international efforts to maintain the rules-based global order [including the Korean War, the Vietnam War, the wars in Iraq, Afghanistan, Syria, etc.] and address shared security challenges including the threat of terrorism and state fragility (DoD, 2016, p. 46).

This insight explains why Australian authorities are preoccupied with the Chinese threat to 'peace and stability, respect for international law, unimpeded trade and freedom of navigation and overflight' in the 'Indo-Pacific' (DoD, 2016, p. 57), despite that Australian national interests defined in terms of its territorial integrity and economic prosperity are not at stake, and despite that geopolitical competition weakens international law and hampers peaceful dispute resolution.

The temporal mismatch that, not always but often, exists between Chinese actions and rising Australian threat perceptions corroborates this finding. While the central tenets of the rules-based order and its challenge through the emergence of China (and India) appeared explicitly in the 2009 Defence White Paper, the cognitive framework for the interpretation of Chinese actions in the maritime sphere not only predates the escalation of the South China Sea disputes between 2012 and 2014. Australia's the so-called legitimate interest in the South China Sea has its roots in Cold War security politics, and the concern with the FoN for Australian warships in the context of the changing international order can be traced back at least as far as the defence White Paper of 2000 (DoD, 2000, pp. 87/88). In other words, the prevailing views of order, including the rules and norms that constitute it, are of a distinctly subjective nature.

## Conclusion

If we seek to better understand the competing conceptions of order, perceived challenges to those orders and pertaining policy responses, the

relational and subjective nature of order requires us to re-politicize international law. That is, we have to recognize the historical context as well as the inherently political character of the making, maintenance and unmaking of legal rules and norms. The prime example is Grotius's seminal *Mare Liberum*, which he had published in 1609 to defend the Dutch Imperial fleet's freedom to sail, trade and police the Indian and Pacific Oceans, that is, to assert the naval power's 'freedom of navigation' in the 'Indo-Pacific' of the time. Others, like the Englishman John Selden with his *Mare Clausum* and the Portuguese Serafim de Freitas in *De iusto imperio Lusitanorum Asiatico* [On the Just Empire of the Portuguese in Asia], responded in kind. The political nature of the so-called rules-based order becomes apparent in the fact that the Freedom of Navigation as one of its ostensible principal pillars, in practice, refers to the freedom of navigation for a specific country's warships; in that the Chinese threat to the FoN mainly stands for a rather diffuse 'Asian challenge', and in that upholding the Freedom of Navigation essentially refers to the perpetuation by military means of the idealized (imagined) prosperous and universally beneficial US-led 'Western' dominance that justifies specific Australian foreign and security political practices and undergirds a particular form of the state

This insight is corroborated by the continuity in how Australian officials have been defining security political imperatives over the last three decades. In particular, the logic that 'a stable rules-based global order serves to deal with threats before they become existential threats to Australia, and enables our unfettered access to trading routes, secure communications and transport to support Australia's economic development' from 2016 (DoD, 2016, p. 70, emphasis added), bears striking resemblance with the assertion in the 1987 Defence White Paper that 'the vitality of our alliance relationship with the United States [...] provides us with confidence that assistance would be forthcoming in the event of substantial military attack on Australia or its direct interests,' and that 'the United States action would be most unlikely to await the emergence of a major threat' (DoD, 1987, p. 26, emphasis added). In other words, the rules-based order is not only synonymous with the Australia-US alliance relationship and US primacy more generally. Since this alliance system will 'deal with threats before they become existential' to Australia, it may also well be the case that the rules-based order, in fact (co)produces the very threat it is thought to prevent. What is more, by glossing over the epochal transformations in the last 70 years, the end of the global Cold War, the emergence of capitalist China as world factory and consumer, the rise (and fall) of regional projects, and the fragility of the financialized global economy in particular, the quest to secure the rules-based order has potential to, at least partially, recreate the second pole of the Cold War era, that is the 'non-Western' bloc, which got lost in



the Soviet/Russian and Chinese transformations and keeps on challenging long-standing Australian worldviews by way of its very absence.

Albeit Australian representations are some of their clearest manifestation, the larger question remains why Cold War-era mental maps of the 'West' and their solidification in formal institutions have largely endured beyond the epochal changes of the 1990s and continue to cause tensions among other capitals of the Asia-Pacific. This includes the persistence of mirror images among those decision-makers, like the Chinese leadership, who see themselves facing this monolithically perceived 'West'. Moreover, the finding that various state actors promote their very own conceptions of rules-based orders by deploying universalist conceptions of norms, which are only loosely related to the UN Convention on the Law of the Sea, raises the questions whether and what new rules, norms and orders may indeed emerge from strategies that further national power and contestations over expanded spheres of influence.

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